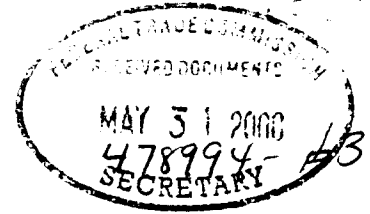


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May 30, 2000

Mr. Donald S. Clark, Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: **CARU Safe Harbor Proposal – Comment P004504**

Dear Mr. Clark:

We represent the Toy Manufacturers of America, Inc. ("TMA"), a not-for-profit trade association composed of more than three hundred (300) manufacturers whose aggregate sales at the retail level exceed \$23 billion annually. TMA's membership accounts for approximately 85% of total domestic sales of toy products. The Association is recognized by government, trade, media and consumers as the authoritative voice of the U.S. toy industry.

TMA is submitting an original and five copies of comments in support of the proposed "Safe Harbor" Guidelines submitted by the Children's Advertising Review Unit ("CARU") in response to the Notice of the Federal Trade Commission ("FTC" or "Commission") at 65 Fed. Reg. 24960 (April 28, 2000). CARU's proposal is consistent with the provisions of the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501, et seq., and implementing rules, 16 C.F.R. §312 et seq., and we are submitting these comments in support of CARU's Safe Harbor proposal.

As a founding member of CARU, TMA strongly supports the safe harbor proposal submitted by CARU. Founded more than 25 years ago, CARU is a preeminent national organization focused exclusively on voluntary regulation of advertising and marketing practices involving children. CARU was among the first organizations to recognize the challenges of the

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new interactive media and to establish self-regulatory guidelines governing online information collection from children (1996). Many provisions of COPPA reflect the principles of and parallel the CARU Guidelines. It is a measure of CARU's leadership that the FTC recommendations mirrored most precisely the provisions of CARU's guidelines. Additionally, these guidelines were revised in order to ensure harmonization with COPPA.

CARU enjoys a 96% success rate in resolving complaints about advertising to children. CARU's safe harbor proposal meets the requirements of COPPA. TMA supports CARU's request that the Federal Trade Commission approve its proposal. We believe that the CARU proposal merits support based upon the merits and the historical role of CARU in monitoring advertising practices in the marketplace.

Please note the following comments in support of CARU's proposal:

**WHEN TAKEN AS A WHOLE, CARU'S PROPOSAL
MERITS THE SUPPORT OF THE COMMISSION**

The CARU proposal outlines the major provisions of the CARU Guidelines and sets forth in detail how they meet or exceed the requirements of COPPA and its implementing rules (the "Rule").

The CARU Guidelines "implement substantially similar requirements that provide the same or greater protections for children" as those of the Rule.

CARU's proposed safe harbor program includes an agreement by participants in the CARU dispute resolution process to be bound by CARU's determinations. CARU has been successful because industry members voluntarily agree to participate in the CARU process. Signing a statement of compliance reflects current practice while meeting the Rule's strictures that to be accepted as a "safe harbor," a self-regulatory program must provide a "mandatory" mechanism for the independent assessment of compliance. The program's documents, developed with input from an array of CARU Advisory Council members, puts down on paper questions the CARU staff would normally ask about a site's information collection practices in reviewing its compliance status. It is designed in a format that is easy for companies, large and small, to complete, while addressing the key questions which the CARU staff must consider to assess compliance. In addition, compliance with the program requirements is required annually in order to maintain participation and listing with CARU.

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These features are recognized as effective mechanisms for compliance under §312.10 (b)(2). CARU's proposal will allow CARU to offer "safe harbor" status to certain sites, while still maintaining its leadership role as the national self-regulatory body for children's advertising both online and offline even in instances where websites have not sought safe harbor status. Thus, consumers who have a complaint about sites that have elected not to participate formally in the CARU safe harbor program may nevertheless find that they can benefit from the CARU dispute resolution process just as they can now. It is worth noting that CARU does not charge consumers for its services, and will work with sites in an effort to resolve complaint even if they are not CARU supporters. In its request for comments, the FTC, in its first question, asks for comments on the totality of the proposed guidelines. As we have noted, we believe that the guidelines are a benchmark for ethical advertising practices throughout the industry. Recognizing CARU's proposal will greatly enhance adoption of the CARU guidelines and participation in its monitoring program. This can only benefit the FTC's effort to promote compliance with COPPA and its implementing rules.

CARU'S SAFE HARBOR PROGRAM PROVIDES "THE SAME OR GREATER PROTECTIONS FOR CHILDREN" AS SPECIFIED UNDER THE RULE

The second question posed by the FTC is whether the provisions of the proposed guidelines provide the same or greater protections for children as those outlined in §§312.2 to 312.8 of the Rule. CARU's submission contains an excellent summary of the specific manner in which the proposed safe harbor program meets or exceeds the Rule's requirements. Again, it is important to remember that 1) the CARU proposal, including the Guidelines and the self-assessment form, must be read in its entirety, and 2) the underlying philosophy of CARU emphasizes mechanisms to foster the parent's role in monitoring their children's online experiences. The latter element was an important point leading to enactment of COPPA. It is in this area in particular where the Guidelines offer greater protection than the Rule.

For example, while §312.4 of the Rule outlines detailed elements of notices under the Rule, the CARU Guidelines states explicitly:

"In keeping with CARU's principal regarding respecting and fostering the parent's role in providing guidance for their children, advertisers who communicate with children through e-mail should remind and encourage parents to check and monitor their children's use of e-mail and other online activities regularly."

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CARU supporters routinely urge parents to supervise their children's web activities, both in notices posted at their site and in e-mail notices to parents.

Another example involves the provisions of the CARU Guidelines which state:

Even when advertiser communicates with the child by e-mail, there should be an opportunity with each mailing for the child or parent to choose by return e-mail to discontinue receiving mailings.

The Rule does not contain a specific requirement that each e-mail message to a parent or child include opt-out mechanisms.

The parental consent mechanisms outlined in §312.5 closely parallel the CARU Guidelines. Notice and consent obligations triggered by the Rule occur if a site is either child-directed, or, if a site is a general-interest site, if the web site operator "knows" if a visitor is under 13. Age-screening thus becomes an important aspect of certain sites' operations. The Rule does not address age-screening specifically. The CARU Guidelines, however, establish that where age-screening is used, "care should be taken so that screening questions do not encourage children to provide inaccurate information to avoid obtaining parental permission." This guidance on age-screening is an excellent example of how CARU attempts to provide practical assistance to advertisers on a very subjective issue important to those who wish to responsibly limit their offerings to those over age 13.

Similarly, the CARU Guidelines reflect the essence of the requirements of § 312.5. CARU requires verifiable parental consent to be obtained using reasonable and appropriate methods where personal information is collected from a child for purposes other than for internal marketing. CARU has always recognized common sense exceptions, like allowing sites to respond to a one-time only request from a child or to contact the child for the purpose of requesting contact information from the parent. The Rule, like the CARU Guidelines, recognizes that situations where a child's personal information is shared with third-parties or made available to the public online present greater risks, requiring a higher level of involvement by and approval by a parent. As noted previously, while the CARU Guidelines do not exactly parrot each provision of this section, this is immaterial because of the over-arching provision of the Guidelines which establishes that they are to be read in the context of applying notice, choice and consent, as defined by the FTC.

As to §312.6, encompassing the right of a parent to review personal information provided by a child, the CARU proposal outlines the relevant provisions of the Guidelines, and CARU's

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approach to determining the identity of a parent sufficient to satisfy the requirements of §312.6(a)(3). Like the Rule itself, the CARU Guidelines establish that the web site operator must use reasonable efforts to assure that the individual requesting the opportunity to access and correct a child's information indeed is that child's parent in a flexible way that is suited to fast developing technological changes.

The CARU Guidelines early on included language found in §312.7 of the Rule. That section prohibits conditioning a child's participation on the collection of more personal information than was reasonably necessary to allow the child to participate in the online activity. The foregoing provide many examples of CARU's pivotal role in promoting ethical practices in cyberspace.

Finally, the Guidelines recognize the importance that maintaining confidentiality, security and integrity of personal information has, just as §312.8 of the Rule does. The self-assessment process outlined by CARU will allow web site operators and the CARU staff to consider these issues in a practical, site-specific manner. The confidential nature of the self-assessments will help assure that the security, integrity and confidentiality of consumer information is not inadvertently compromised by publicizing specific security mechanisms.

CARU'S MONITORING AND COMPLIANCE MECHANISMS ARE EFFECTIVE

Question 3 relates to the effectiveness of mechanisms used to assess compliance. Section 312.10(b)(1) of the Rule requires that groups offering safe harbor programs must provide "an effective mandatory mechanism for the independent assessment of subject operators' compliance with the Guidelines." CARU's combination of routine monitoring, site seeding, and dispute resolution historically has offered a robust independent mechanism to assess compliance are specifically recognized in this section of the Rule. The Rule's requirement that this mechanism be "mandatory" has lead CARU to adopt the signed self-assessment approach outlined above. Thus, the CARU proposal meets the requirements of the Rule.

CARU'S SUCCESS RECORD DEMONSTRATES THAT ITS SELF-REGULATORY GUIDELINES ARE EFFECTIVE

Question 4 relates to whether incentives for compliance offered by the safe harbor program are effective. Question 5 asks whether the guidelines provide an adequate means for resolving consumer complaints. The value of the CARU self-regulatory program historically has been in its unparalleled ability to quickly resolve complaints. Most often, lapses occur based on

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lack of attention to detail or a failure to think through a particular ad or activity. The CARU process allows the CARU staff to quickly sensitize an advertiser or web site operator to an issue of concern. Again, most complaints are resolved informally with advertisers taking quick action. Where an advertiser is hesitant to act, referral through the normal procedures outlined by CARU in its safe harbor proposal occurs. In those very few instances where, despite a ruling requesting a change in behavior, a company refuses, the matter may be referred to an applicable legal authority. This not only adequately resolves complaints, but assists the FTC and the public by allowing scarce enforcement resources to be focused elsewhere.

The self-regulatory program administered by CARU is remarkably successful. This program historically has demonstrated its ability to quickly resolve complaints. The CARU process allows an advertiser to be made quickly aware of issues of concern. CARU's experience indicates that most complaints are resolved quickly once the advertiser becomes aware of the issue. In those rare instances where an advertiser refuses to cooperate, the matter may be referred to an applicable legal authority. The techniques utilized by CARU are explicitly recognized under §312.10(b)(3).

The first compliance incentive CARU offers is the existence of the Guidelines. They reflect broad input from CARU's academic advisors and industry on appropriate ethical standards. Guidelines for corporate behavior are highly influential to companies seeking to benchmark their actions. The major national advertisers who were instrumental in founding CARU wish to maintain consumer trust, and thus use their best efforts to comply with the legal and ethical norms reflected throughout the Guidelines. This is one reason why CARU's enforcement initiatives involving online information collection from children have largely focused on smaller, newer players that have not had the benefit of longstanding involvement with CARU.

The second incentive the CARU program provides is its process of publicizing the resolution of complaints. This allows the public to know both when a complaint has been shown to be unfounded, as well as when an advertiser decides to modify an ad or action in response to a concern raised via the CARU process.

The third incentive is the threat of referral to bodies like the FTC if the advertiser does not agree to modify behavior. As noted above, in its history, only 4% of CARU's cases have been unresolved and required referral.

The success of CARU's program demonstrates that it has been extraordinarily effective. CARU has noted that its safe harbor program will initially only be available to its participant

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base. This will ensure, at the outset, that beneficiaries of the program will be those companies that demonstrated their commitment to the CARU guidelines. This, in turn, will create an incentive to other non-participating companies to voluntarily embrace the CARU program. With a demonstrated commitment to these guidelines, such companies will then be able to avail themselves of the benefits of participation.

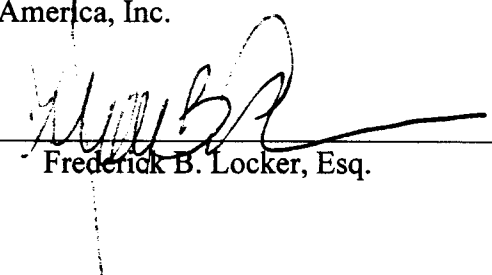
CONCLUSION

This safe harbor program envisioned in CARU's proposal will assist the FTC and the public by allowing scarce governmental enforcement resources to be focused where needed. The net effect will be to promote an effective, established method of ensuring compliance with the fundamental requirements of COPPA and its implementing rules, by the broadest range of companies and advertisers. Given the FTC's own efforts to promote public awareness and compliance with COPPA and its rules (65 Federal Register 32100 [May 22, 2000]) and FTC's recently submitted findings contained in the report submitted to Congress on May 22, 2000 entitled "Privacy Online - Fair Information Practices in the Electronic Marketplace", a promotion of participation in the CARU program granting its proposal for safe harbor status will benefit the public interest. CARU's unquestioned successful history in encouraging compliance should be recognized, and demonstrates the merit of according the organization safe harbor status.

Respectfully submitted,

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Counsel for Toy Manufacturers
Of America, Inc.

By: _____


Frederick B. Locker, Esq.

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